## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO WESTERN DIVISION AT DAYTON

ELIJAH WHALEY,

Plaintiff, Case No. 3:22-cv-356

VS.

EXPERIAN INFORMATION SOLUTIONS, INC.,

District Judge Michael J. Newman Magistrate Judge Caroline H. Gentry

Defendant.

ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS (Doc. No. 17); (2) DISMISSING PLAINTIFF'S COMPLAINT WITHOUT PREJUDICE (Doc. No. 5); (3) PROVIDING PLAINTIFF LEAVE TO FILE AN AMENDED COMPLAINT WITHIN 10 DAYS OF THIS ORDER; AND (4) ADVISING PLAINTIFF THAT HIS CASE MAY BE TERMINATED ON THE DOCKET IF HE FAILS TO COMPLY WITH THIS ORDER

This *pro se*<sup>1</sup> civil case appears to assert violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681. It is before the Court on Defendant's Fed R. Civ. P. 12(b)(6) motion to dismiss. Doc. No. 17. Plaintiff filed an opposition memorandum (Doc. No. 20), and Defendant submitted a reply (Doc. No. 23).<sup>2</sup> The motion is now ripe for review.

I.

<sup>&</sup>lt;sup>1</sup> The Court accepts a *pro se* plaintiff's allegations as true and "construe[s] filings by *pro se* litigants liberally." *Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006) (citing *Spotts v. United States*, 429 F.3d 248, 250 (6th Cir. 2005)). However, while *pro se* pleadings are "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), *pro se* plaintiffs must still satisfy basic pleading requirements. *See Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010).

<sup>&</sup>lt;sup>2</sup> Plaintiff admits that he used Artificial Intelligence ("AI") to prepare case filings. *See* Doc. No. 25 at PageID 536–37. The Court reminds all parties that they are not allowed to use AI—for any purpose—to prepare any filings in the instant case or any case before the undersigned. *See* Judge Newman's <u>Civil Standing Order at VI</u>. Both parties, and their respective counsel, have an obligation to immediately inform the Court if they discover that a party has used AI to prepare any filing. *Id*. The penalty for violating this provision includes, *inter alia*, striking the pleading from the record, the imposition of economic sanctions or contempt, and dismissal of the lawsuit. *Id*.

Plaintiff's complaint is 84 pages long. *See* Doc. No. 5. Counting attachments—consisting of various letters sent to Defendant in which Plaintiff complains about allegedly unlawful conduct—it is 144 pages. *See* Doc. No. 5-1. Although unclear, Plaintiff alleges in his complaint that Defendant violated the FCRA, at times and dates not apparent on the face of his various filings. *See generally* Doc. No. 5. Recognizing this issue, Defendant seeks dismissal of Plaintiff's verbose and confusing pleading. Doc. No. 17 at PageID 346.

II.

Fed. R. Civ. P. 8(a) requires that "[a] pleading that states a claim for relief . . . contain,' among other things, 'a short and plain statement of the claim showing that the pleader is entitled to relief." Kensu v. Corizon, Inc., 5 F.4th 646, 649 (6th Cir. 2021) (emphasis added) (quoting Fed. R. Civ. P. 8(a)(2)). A complaint violates Fed. R. Civ. P. 8(a) if "[it] is so 'verbose, confused and redundant that its true substance, if any, is well disguised." Id. (quoting Gillibeau v. City of Richmond, 417 F.2d 426, 431 (9th Cir. 1969)). The usual remedy is dismissal without prejudice, while granting leave to amend. Id.

Plaintiff's complaint and various attachments are "verbose, confused, and redundant," violating Fed. R. Civ. P. 8(a). To state a claim under the FCRA against an eligible consumer reporting agency under § 1681s-2(b),<sup>3</sup> a plaintiff must meet the "threshold showing" that the information is inaccurate or incomplete by alleging sufficient facts, when taken as true, to show "that the information [Defendant] provided is false or that it contains a material omission or creates a materially misleading impression." *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 629–30 (6th Cir. 2018) (citing *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 617-18 (6th Cir. 2012); *see* 

<sup>&</sup>lt;sup>3</sup> Liberally construing Plaintiff's allegations in his favor, the Court recognizes that he brings a claim under § 1681s-2(b), which "prevent[s] 'furnishers of information' from spreading inaccurate consumer-credit information." *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 629–30 (6th Cir. 2018) (emphasis deleted) (quoting *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 614 (6th Cir. 2012)).

also Thompson v. Equifax Info. Servs., LLC, 441 F. Supp. 3d 533, 548 (E.D. Mich. 2020) ("[R]eporting is accurate for purposes of the FCRA as long as it is technically accurate, or accurate on its face." (quoting Shaw v. Equifax Info. Sols., Inc., 204 F. Supp. 3d 956, 960 (E.D. Mich. 2016))).

This 144-page pro se complaint only alleges that Defendant violated the FCRA, without indicating what inaccurate information, if any, Defendant relayed to others. See generally Doc. No. 5. Consequently, the complaint is unclear and potentially frivolous or malicious. *Id.* The pleading consists of irrelevant background information, interspersed quotes, and miscellaneous legal citations that do not offer Defendant a fair glimpse at what actions could plausibly give rise to an FCRA claim. Id.; see, e.g., McComb v. Dominium Prop. Mgmt., No. 3:20-cv-369, 2022 WL 4395994, at \*3 (S.D. Ohio Sept. 23, 2022) (dismissing amended complaint because it was "intersperse[d with] 'excerpts from case law and numerous statutory and regulatory provisions' with verbal and written communications allegedly made to him by certain Defendants[,]" which made it "impossible for a Defendant to admit or deny and respond with defenses pursuant to Fed. R. Civ. P. 8(b)(1)"); cf. Flayter v. Wis. Dep't of Corr., 16 F. App'x 507, 508 (7th Cir. 2001) ("A prolix and confusing complaint should be dismissed because it makes it difficult for the defendant to file a responsive pleading and for the court to conduct orderly litigation." (citing Vicom, Inc. v. Harbridge Merch. Servs., Inc., 20 F.3d 771, 775–76 (7th Cir. 1994))). Thus, in its current form, Plaintiff's pro se complaint violates Rule 8(a)'s mandate to plead a short and plain statement showing he is entitled to relief. See Kenzu, 5 F.4th at 649.

## Ш.

Defendant's motion to dismiss (Doc. No. 17) is thus **GRANTED**, and Plaintiff's complaint (Doc. No. 5) is **DISMISSED WITHOUT PREJUDICE**. Plaintiff is **GRANTED** 

LEAVE to file an amended complaint within TEN DAYS of the issuance of this Order. In his

amended complaint, Plaintiff shall: (1) briefly describe the alleged inaccurate information that

Defendant allegedly transmitted; (2) include the dates in which Defendant allegedly transmitted

this allegedly inaccurate information; and (3) allege to whom Defendant allegedly transmitted this

information. The amended complaint shall not exceed 20 pages. Defendant may, if warranted,

file a motion to dismiss in the event Plaintiff files an amended complaint. Plaintiff is ADVISED

that, if he fails to timely file an amended complaint in accordance with this Order, the Court may

dismiss his complaint with prejudice and terminate the case on the docket. See Kensu, 5 F.4th at

652-53.

IT IS SO ORDERED.

November 16, 2023

s/Michael J. Newman
Hon. Michael J. Newman

United States District Judge